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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/623,063	10/24/2000	Linda Gillian Durrant	0380-P02286U	5686

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DANN, DORFMAN, HERRELL & SKILLMAN
1601 MARKET STREET
SUITE 2400
PHILADELPHIA, PA 19103-2307

EXAMINER

SCHWADRON, RONALD B

ART UNIT PAPER NUMBER

1644

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/623,063

Applicant(s)

DURRANT ET AL.

Examiner

Ron Schwadron, Ph.D.

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 104-132 is/are pending in the application.
4a) Of the above claim(s) 115 and 116 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 104-114, 117-132 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/21/04 has been entered.

2. Applicant's election with traverse of nucleic acid encoding non-fusion protein in the reply filed on 12/23/04 is acknowledged. The traversal is on the ground(s) that are stated. This is not found persuasive because of the following reasons.

Regarding applicants comments, the claims as originally filed in the instant application lack a special technical feature for the reasons elaborated in paragraph 1 of the Office action mailed 6/26/2002. The claims also lack a special technical feature in view of the prior art rejections elaborated in this Office Action. Regarding applicants comments, the MPEP section 1850, 37 CFR 1.475 states: 37 CFR 1.475. *Unity of invention before the International Searching Authority, the International Preliminary Examining Authority and during the national stage.*

(a) *An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.*

The claims as originally filed in the instant application lack a special technical feature for the reasons elaborated in paragraph 1 of the Office action mailed 6/26/2002 and in view of the prior art rejections elaborated in the instant Office Action. International stage prosecution and any determination of unity or lack of unity is irrelevant because the claimed inventions lack a special technical feature as per above. Regarding applicants comments about fusion proteins versus proteins, the aforementioned are chemically and structurally distinct as per the previous Office action.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 115,116 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/23/04.

4. All peptides recited in the claims must be identified by the pertinent SEQ. ID. number. See 37 CFR 1.821(d).

5. The rejection of claims 64-67,71,75,76,95,102,103 under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention for the reasons elaborated in the Office Action mailed 11/19/2003 (paragraph 3) are withdrawn in view of the cancellation of said claims.

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 104-114,117-132 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is no support in the specification as filed for claim 104, lines 15-18. Regarding applicants comments, the specification pages 31-36 does not disclose that the peptides have at least one of the two activities recited in the claim, lines 16-18. In addition, the specification does not disclose said properties in the context of claim 104. Regarding limitation (i), the specification pages 31-33 discloses binding of specific peptides under specific conditions using specific target cells wherein the results

disclosed in Table 2 were achieved. Thus, said description is not of the scope of said limitation as used in the claim, wherein the peptide binds to any target cell expressing HLA-A2 with an unspecified affinity/stabilisation ratio. Furthermore, said example is restricted to peptides of the length used in the Example, whilst the peptides recited in the claim are not restricted to the specific length used in said Example. Similarly, limitation (ii) discloses results obtained using specific peptides under specific assay conditions using specific target cells wherein the results disclosed in Table 3 were achieved.

There is no written description of the scope of the claimed inventions in the specification as originally filed (the claimed inventions constitute new matter).

8. The rejection of claims 64-67,71,75,76,95,102,103 under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention as per paragraph 4 of the Office Action mailed 11/19/2003 is withdrawn in view of the cancellation of said claims.

9. The rejection of claims 64-67,71,75,76,95,102,103 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the reasons elaborated in the Office Action mailed 11/19/2003 is withdrawn in view of the cancellation of said claims.

10. Regarding the term Tek as recited in the claims, the specification discloses that Tek (a.k.a. tie-2) is the protein disclosed in various prior art references recited in page 1 of the specification.

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States

12. The rejection of claims 64-67,71,75,76,95,102,103 under 35 U.S.C. 102(b) as being anticipated by Breitman et al. (US Patent 5,681,714) as evidenced by Rammensee et al. is withdrawn in view of the cancellation of said claims.

13. Claims 104-114,117-132 are rejected under 35 U.S.C. 102(b) as being anticipated by Breitman et al. (US Patent 5,681,714).

Breitman et al. teach nucleic acids encoding fragments of Tek (see column 14, last two paragraphs). Breitman et al. teach a nucleic acid which encodes less than 20% of Tek and which contains the Z32 peptide recited in claim 111 (see claim 11 wherein Z32 is contained in amino acids 10-209 of Tek). The various functional parameters recited in claim 104 are inherent properties of peptide Z32. Breitman et al. teach that said nucleic acids can be incorporated into suitable viral vectors/plasmids and host cells containing the necessary regulatory sequences required for transcription/translation (see columns 14-16).

Regarding applicants comments, Breitman et al. teach a nucleic acid which encodes less than 20% of Tek and which contains the Z32 peptide recited in claim 111 (see claim 11 wherein Z32 is contained in amino acids 10-209 of Tek).

14. No claim is allowed.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ron Schwadron, Ph.D. whose telephone number is 571 272-0851. The examiner can normally be reached on Monday-Thursday 7:30-6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571 272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RONALD B. SCHWADRON
PRIMARY EXAMINER
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Ron Schwadron, Ph.D.

Primary Examiner

Art Unit 1644